



Agenda
Master Plan Subcommittee Meeting
Of the Public Art Committee
Wednesday, June 21, 2006
6:00pm
Room 5, Milpitas Community Center
457 E. Calaveras Blvd.

- I. Call To Order
- II. Public Forum (*Please limit remarks to three minutes*)
- III. Announcements
June 20, 2006, Council Meeting Update
- IV. Approval of Minutes: May 17, 2006
- V. Approval of Agenda: June 21, 2006
- VI. Old Business
 1. PAC Policies and Procedures Manual
- VII. New Business
 1. Master Plan Elements
 - Detailed Yearly Acquisition Plan
 - Identifying Locations for Public Art
 2. Implementation Timeline Outline
 3. Review Current City of Milpitas Art Donation Policy
- VIII. Next Meeting Date: July 19, 2006
- IX. Adjournment

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION** at the City Attorney's office at the Milpitas City Hall, 455 E. Calaveras Blvd, Milpitas, CA 95035.

E-mail: rpioroda@ci.milpitas.ca.gov
Fax 408/586-3030 Phone 408/586-3000

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov Select Open Government Ordinance under News Features

DRAFT

**Public Art Committee
Policies and Procedures Manual**

Suggestions –

Public Art Committee Program and Procedures Manual

Public Art Committee Procedures Manual

Public Art Committee Manual



June 12, 2006

Public Art Committee Policies and Procedures Manual

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- A. Public Art Ordinance No. 271
- B. Media Outlets
- C. City of Milpitas Policy and Procedure for the Acceptance of Donated Artworks

A. Introduction

The Public Art Committee Policies and Procedures Manual is an overview of the responsibilities, guidelines, and processes associated with the City of Milpitas Public Art Committee (PAC). Current and potential PAC members should read the manual to become familiar with the policies and procedures that govern the PAC and its members and to become familiar with the process to acquire public art.

B. Purpose & Mission Statement

Purpose

The purpose of the Public Art Committee is to encourage appreciation of the arts while enhancing the vitality and creative diversity of Milpitas through public art.

Mission

The Public Art Committee is dedicated to planned acquisition of art of exceptional quality and enduring value as outlined by the City of Milpitas Public Art Ordinance.

C. Role of the Public Art Committee

The Public Art Committee (PAC) was established on August 2, 2005 by City Ordinance. It is the Committee's responsibility to review and recommend the selection and placement of public artwork to the City Council and the Redevelopment Agency. The Committee provides feedback and recommendations to the City Council regarding the City of Milpitas Public Art Master Plan and the efforts to choose and place public art. The Committee shall also recommend to the City Council the adoption of program guidelines, policies and procedures to ensure consistent administration of the City of Milpitas Public Art Program.

The Committee shall be comprised of eleven (11) citizens who reside within the corporate limits of the City of Milpitas. 7 members shall be members of the City of Milpitas Arts Commission, 3 members shall be members of the Milpitas Alliance for the Arts, and one member shall be a citizen involved in the arts or a professional artist and is supported by a staff liaison.

The Public Art Committee shall:

- Jointly develop with input from the public and upon the review, advice and recommendation of the Public Art Committee a Public Art Program Master Plan. The Public Art Program Master Plan shall establish and guide the development and implementation of a Milpitas Public Art Policy.
- The Public Art Program Master Plan shall:

- Survey opportunities throughout the City and the Redevelopment Agency District for suitable sites and areas for the placement of Public Art;
- Provide advice as to the potential priority for Public Art installations;
- Advise as to potential Public Artwork aesthetic themes;
- Advise as to the appropriate cataloguing and maintenance of Public Artwork.
- Aggressively seek to acquire additional funding for the Public Art Fund through donations, grants, sponsorships and all other appropriate fundraising means and opportunities;
- Prepare a semiannual report to the City Council updating the City Council on the Committee's fundraising efforts;
- Evaluate and recommend to the City Council changes in the public art;
- Make recommendations regarding the care and maintenance of the public art collection to appropriate parties;
- Create, review and recommend the annual work plan to the City Council;
- Act as a artist selection panelist;
- Ensure community outreach and citizen participation in the public art program;
- Review and recommend proposed gifts and loans of art to the City;
- Review and recommend accessioning and deaccessioning of artworks from the art collection;
- Catalog art collection and make maintenance recommendations; and
- Periodically review and recommend changes to the Public Art Program guidelines, policies and procedures.

D. Role of the Committee Staff

The Committee staff is composed of two employees of the City of Milpitas, who act as a staff liaison to the Committee and a recording secretary who prepares and documents the Public Art Committee meetings. The Recreation Services Manager who reports to the City Manager heads the staff and a Recreation Services Supervisor administers the Public Art Program. Additional support will be provided by the Finance, Engineering and Public Works Departments.

The Committee staff shall:

- Prepare agendas and minutes for the Public Art Committee and subcommittees;
- Retain and make available public art information and research items for the PAC members;
- Make recommendations on the overall work objectives of the public art program, such as staff project administration, coordination with artist and city staff, strategic planning and community outreach;
- Monitor the overall development of the public art collection;
- Facilitate artist selection panels;

- Oversee a maintenance survey as appropriate of the public art collection;
- Present the PAC with the eligible Capital Improvement Program projects, funding appropriations and fund balance at the beginning of the fiscal year;
- Review and forward to the City Council the annual work plan presented by the PAC;
- Oversee all artists' contracts in association with the Public Art Program; and
- Assist the PAC in presenting and obtaining approvals on recommendations to the City Council.

E. Public Art Committee Bylaws

CITY OF MILPITAS BYLAWS FOR PUBLIC ART COMMITTEE

I. Purpose & Mission

The City Council is committed to providing a livable and vibrant community for all of its citizens and visitors. Based on the community's suggestions received and subsequent City Council discussions and direction the City Council established a Public Art Committee, by Ordinance No. 271 (2005).

The Committee will meet bi-monthly, to provide feedback and recommendations to the City Council regarding the City of Milpitas Public Art Master Plan and the efforts to choose and place public art. The Committee shall be named: "City of Milpitas Public Art Committee" (hereafter "Committee").

II. Committee

a) **Membership:** The Committee shall be comprised of eleven (11) citizens who reside within the corporate limits of the City of Milpitas. 7 members shall be members of the City of Milpitas Arts Commission, 3 members shall be members of the Milpitas Alliance for the Arts, and one member shall be a citizen involved in the arts or a professional artist. Committee members are volunteers and shall serve without compensation. All members of the Committee shall serve a three year term and may be eligible for re-appointment by the Mayor, should the Committee member end his/her term in good standing. Interested persons must submit a City of Milpitas citizen participation application (available online at www.ci.milpitas.ca.gov or at the City Clerk's Office) and proceed through the appointment process. The appointment process shall include recommendation for appointment by the Mayor, and final approval by the City Council. The City Council may, at its discretion, conduct interviews of proposed Committee members prior to appointment.

b) The Committee bears no oversight authority over any City Department, personnel, consultant, budget or commission. The Committee has no authority to bind the City to any contractual agreements and may not, without authority, make any decisions on behalf of the City. The Committee's recommendations shall be advisory to the City Council. Individual Committee members shall not be City employees, department heads, City consultants or act in any way as agents of the City. However, the City Manager, Director of Finance, Manager of Recreation Services, Director of Public Works or City Engineer or their designee may provide guidance and input to the Committee and may be consulted, from time-to-time, for additional information.

c) The Committee's primary task shall be to review and recommend the selection and placement of Public Artwork (as that term is defined in Ordinance No. 271). The Committee shall also recommend to the City Council the adoption of program guidelines, policies and procedures to ensure consistent administration of the City of Milpitas Public Art Program.

d) Members shall serve at the pleasure of the City Council and may be terminated at any time by the City Council.

e) Members are volunteers and shall serve without compensation or reimbursement for any personal expenses.

III. Committee and City staff procedures

a) The Committee's staff liaison shall be the Manager of Recreation Services, or their designee. The Committee shall receive staff support on an as-needed basis from the Manager of Recreation Services, and shall coordinate all requests for staff support through the Manager of Recreation Services or their designee.

1. The Committee shall have the following City resources available to it for its use, limited to the following:

- (a) Use of meeting rooms in City Hall, or other City facilities
- (b) Reasonable use of City equipment, (copy, fax, telephone)
- (c) Access to publicly available reports maintained by the City

b) The Committee shall meet on a regular, bi-monthly basis according to and under the California Brown Act's requirements. The Committee may hold public working sessions to solicit the input of the community and/or interested citizens or parties. Such working sessions shall be noticed and open meetings according to the California Brown Act's requirements.

IV. Rules of Procedure

- a) A quorum of the Committee shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Committee to hold a meeting. Any six members shall constitute a quorum for the transaction of business.
- b) All actions require a majority vote of the Committee members in attendance.
- c) These Bylaws, the Milpitas Open Government Ordinance and the Brown Act shall govern the operation of the Committee and its meetings.
- d) The Committee shall follow all applicable City fiscal and administrative policies and procedures.
- e) At the first regular meeting following the appointment of the Committee's members the Committee shall select a Chairperson and a Vice-Chairperson from among the Committee's members. The Chairperson and Vice-Chairperson shall serve for one year terms while on the Committee, unless extended to a second one year term by majority vote of the Committee. No Chairperson or Vice-Chairperson shall serve more than two consecutive one year terms. Elections shall take place the first meeting of each new calendar year.
- f) The Chairperson shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.
- g) The Vice-Chairperson shall assume all duties of the Chairperson in his/her absence. In the event the Chairperson and Vice Chairperson are both absent, an Acting Chairperson shall be appointed from the Committee for the meeting from those present.
- h) The staff appointed Secretary shall record the attendance and minutes of all meetings according to the Milpitas Open Government Ordinance, and shall notice all meetings of the Committee pursuant to the California Brown Act.
- i) The Committee may organize itself into Subcommittees to carry out tasks and responsibilities. Subcommittees composed of less than a quorum of the membership shall be subject to the California Brown Act and Milpitas Open Government Ordinance's requirements. Such Subcommittees shall be designated by the Committee with up to five (5) Committee members and at least one staff liaison.
- j) Individual Committee members may not speak for or on behalf of the entire Committee; the Chairperson shall act as the spokesperson for the entire Committee.

k) The Committee is an important function within the City of Milpitas, and as such, certain expectations are held by the City Council in making the appointment of individuals to the Committee. These expectations include the following:

1. Committee members will attend all regular meetings and special meetings as scheduled or as they arise. Committee members will communicate expected and unexpected absences to the Staff Liaison, or his/her designee, in a timely manner. Any member with three or more unexcused absences in a 12-month period shall be reported to City Council with a recommendation for removal from the Committee. Any member of the Committee may be removed from office by majority vote of the City Council at a regularly scheduled meeting.

2. Committee members will communicate any potential conflicts of interest on agenda items to the Secretary, or his/her designee, at least 48 hours in advance of the hearing to allow confirmation of a quorum.

3. Committee members will arrive on time to each meeting, fully participate, and remain in attendance until the end of each meeting.

4. Committee members will prepare themselves for each meeting by reading the agenda, reports and other materials and communicate any questions to the Secretary, Chair or Vice-Chair in advance of the hearing.

5. Committee members will avoid conflicts of interest between their personal and professional financial interests and those interests that may come before the Committee.

V. Adoption

a) This document, as adopted and amended by City Council resolution, shall serve as the Bylaws for the Commission.

PASSED AND ADOPTED by the Arts Commission on the 23rd day of January 2006.

PASSED AND ADOPTED by the Milpitas City Council on the 21st day of February 2006.

F. Location Selection Process

The Milpitas Public Art Committee (PAC) will identify proposed sites for public art within the master plan. This plan will be updated on an as needed basis and individual projects ranked in order of priority, based on development and community input. All public art shall be site specific and broadly defined as artwork placed in a public context – on the street, at gateways, in a park, on the exterior of a building, within the common spaces of a public building and so on.

Initiation of Public Art Projects

Public Art projects may be either linked to a capital improvement project in the City of Milpitas or integrated into areas where no construction is planned. Projects may be brought to the PAC by committee members, the Mayor, the City Council, a user department representative, a neighborhood group or community organization, staff or individual citizens. The Committee will consider each project presented and present their recommendations to the City Council on an annual basis.

Selection Criteria

The PAC will consider the following criteria when selecting locations to be included in the master plan:

- Locations where artwork can have the greatest positive impact on the site or surrounding community;
- Locations that are in early stages of design and will allow the artwork to be fully integrated with the project;
- Locations with pledges of strong community and/or private partnership;
- Locations that are widespread in neighborhoods throughout the City;
- Locations that do not have serious maintenance or security issues;
- Locations where the artwork can be properly installed with patron safety in mind;
- Locations where site design including landscaping, drainage, grading are considered;
- Locations that do not have adverse environmental impacts such as noise, sound and light;
- Locations that are publicly accessible particularly for the handicapped;
- Locations that do not impact adjacent property owners views and
- Locations that do not impact the City's operational functions.

G. Artist Selection Panel and Procedures

The Artist Selection Panel shall be comprised of the members of the Public Art Committee (PAC). There are three main ways in which artists may be selected for individual projects:

- **Open Competition** – Inviting artists/craftspeople to submit qualifications.
- **Limited Competition** – Compiling a selected short list from which a limited number of artists/craftspeople can be invited to submit proposals.
- **Direct Invitation** – Requesting an artist to propose work for a site, participate in the design process, or act as lead artist.

In all cases the PAC must provide the artists with a project brief which shall include the aims and objectives of the project, context or history, description of the artists role, site specifics, timetable, budget, permit and foundation requirements, community participation, maintenance & durability requirements, and criteria and methods for selection.

The PAC will review applications submitted by artists. They will select the artists from which they want specific project proposals and will recommend to the City Council the project they have selected. Selection shall be based on the following criteria:

- The artwork is thought provoking, memorable or enduring and shall reflect the diverse social, cultural, or historical values of the City.
- The artwork is appropriate in terms of scale, form, content and the environment.
- The artwork is durable relative to theft, vandalism, and the environment.
- The artwork can be displayed on City property under the Federal and State constitutions.
- The artwork meets the accepted standards of appropriateness.

Additional members may be added to the artist selection committee for individual projects. As an example, on a CIP project a representative from the design or engineering firm may be added or a department representative for a project for a particular building. A neighborhood resident may also be asked to sit on the artist selection committee for a community project.

H. Project Process – Yearly Acquisition Plan

The Yearly Acquisition Plan is an outline of the public art acquisition process, which coincides with the City's Fiscal Year, July 1-June 30.

PAC Yearly Acquisition Plan

April/May/June

May meeting of PAC – Due to the timing of the start of the Fiscal Year, all selected projects to be created have been decided upon by June.

Based on established budget, the following will take place:

PAC: create/design/mail announcement(s) regarding these specifically agreed upon sites.

Send out RFQ's to artists through one of the three methods as outlined in manual.

July/August

July meeting of PAC

Review all responses to the RFQ's by deadline.

PAC will decide on finalists (number to be determined). Additional members of this jury may be added to the committee for individual projects such as engineers, consulting architect, neighborhood representative, an artist, etc.

Artist(s) are selected and notified based on PAC policy and procedures. Models will be requested for October meeting.

September/October

September meeting of PAC

Final artists will be asked to submit models, detailed drawings, and necessary requested items as required on his/her application. (Due in October - deadlines and dates will correspond with timelines for each project).

Artist(s) must present models in person during a Q & A session.

November/December

November meeting of PAC

Models will be on display at City Hall for November and December for citizen input.

Public postings are made in media outlets to announce that citizens will have the opportunity to speak at a City Council meeting in **January** regarding each of the models. (Media Outlets Attachment B)

During this time of the PAC meeting, the annual maintenance schedule and inspections will be discussed and recommendations made by PAC.

Cataloging is brought up to date.

January /February

1st meeting of City Council: PAC-“Yearly Acquisition Plan” is budgeted based on projects selected by PAC **to coincide with the City’s budget planning process.**

At City Council - PAC’s final, accepted model(s) and public forum will be presented.

2nd meeting of City council: Final selection/approval of model(s) by City Council is made during this time period.

Artist(s) notified of decision.

Contract(s) written and negotiated.

Contract(s) signed, funding released, project begins based on deadlines etc.

March

March meeting of PAC -- new site projects announced, advertised.

PAC reviews any requested considerations.

Vote by PAC as to what projects will be used according to the master plan.

I. Gifts, Donations and Loans of Artwork - TBD

Refer to the City of Milpitas Policy and Procedure for the Acceptance of Donated Artworks. (Attachment C)

J. Artwork Maintenance Program

Maintenance Guidelines

Definition of Maintenance: The upkeep and care of a work of art whether it is 2-D or 3-D, cleaning, repairing, and maintaining it in the condition in which it was received based on the guidelines listed here.

- When considering a work of art, it should be considered as “maintenance free” as possible—within reason i.e. unless an “act of God”, durable in most weather conditions, environment, etc.
- Maintenance for any public art purchased by “the city” is the responsibility of “the city” on a regularly established timetable (2x per year or as deemed necessary) schedule of inspection, reporting to the PAC on condition and recommendation OR when a work of art is in need of maintenance on a more frequent inspection, not only based on a maintenance schedule.
- Artist must specify, in the artist’s contract, how the work of art is to be maintained in the condition in which it was received (procedures) and furnish the names and contact information of professional local conservators who are qualified to maintain and repair specific works in the specific medium.
- Artist may be the “conservator”, if qualified, and will be paid the same as hiring an outside conservator in the maintenance schedule or repairs of that particular work of art.
- Adequate funds must be budgeted by “the city” for the estimated, reasonable repairs of each work of art and will be estimated by consulting the artist and one professional conservator or expert in the particular medium.
- Major repairs or unscheduled maintenance needed for extraordinary repair work or removal of the work due to safety factors, re-siting, etc, including the maintenance of complex or very large items, must be set aside for such instances.
- Major repairs, moving, etc. will be determined by an expert in the type of medium that the art piece falls under (i.e. painting, sculpture, bronze, stone, etc.) and will be conducted by that expert and by his recommended persons. Insurance should be taken out by the city if additional funding is needed for such instances, possibly requesting additional funding from the Public Art Fund.
- Records and receipts of bills will be kept by “art administrator/city” and reported as to final outcome of the maintenance work to be approved by the PAC and the City Council.

K. Cataloging and Deaccessioning Artwork

Cataloging

A permanent photographic record or video and possible drawings as to location is to be made by or available to the appointed Public Art Committee’s “Art Administrator”. Acquired at the time of installation, this detailed information will

insure that the work of art will be maintained in original condition. This record will be archived with all information regarding the work of art on an appropriate form.

Deaccession

This is determined when the artwork is deteriorating past the hopes of repair or retention. Artwork that is no longer acceptable for the site, unsafe or not up to the highest standards or quality of the collection can be considered for deaccession.

The Public Art Committee must vote on any artwork being considered for deaccession with the majority prevailing, with final approval made by the City Council. Considering the above items, the PAC must consult a professional art appraiser or art conservator who is familiar with the specific medium of the artwork. Explanation of the PAC decision to deaccess artwork should be published in a local newspaper and if possible the artist or donor should receive the same information.

Selling of the artwork may be acceptable to the PAC. Exchanging it for another artwork, gifting it to a tax-exempt public institution, donating it to recycling or having it destroyed are other options. Destruction would only take place when the artwork is so severely damaged or deteriorated that it is deemed un-repairable. Any funds gained by sale must be returned to the public art fund to purchase new art.

Art Donation Policy Procedure

- ❑ Donating Artist picks up Art Donation packet at the MCC – includes Art Donation Application and Art Donation Policy and Procedures
- ❑ When Application completed, artist will return Application and staff will review only to ensure the application is filled out completely and signed.
- ❑ The donation application will be agendized for an Arts Commission meeting where the Commission will review the application and proposed donated artwork (through presentation of model or actual artwork)
- ❑ The Arts Commission will either recommend to Council to either approve or deny the donated art
- ❑ Art Donation to go to City Council
- ❑ Should Artwork be approved by Council, the City and the Artist will enter into a written agreement for the donated artwork

City of Milpitas

Policy and Procedure for the Acceptance of Donated Artworks

- I. Statement of Purpose: The purpose of this policy is to set forth standardized policies and procedures for the acceptance of donated artworks offered to the City by the artist. This policy and procedure shall not apply to gifts of artworks to the City by persons other than the artist.
- II. Statement of Policy: It is the policy of the City of Milpitas to accept donations of artwork displaying high aesthetic and technical competence to add to its collection.
- III. Review and Acceptance Procedure
 - a. Any artist wishing to donate an artwork to the City of Milpitas must submit an application to the City Manager's office in the form attached hereto. The application shall be accompanied by the following information:
 - i. Photo, plans, model, or maquette of proposed donation
 - ii. Technical description of the work
 - iii. Any special care, maintenance, mounting, or display requirements
 - iv. Resume or curriculum vitae of the artist
 - v. Statement of value of the proposed donation
 - b. City staff shall review the application and supporting documentation for the proposed donation. Upon finding that the application is complete, City staff shall place the application on the agenda of the Arts Commission for consideration.
 - c. The Arts Commission shall review the application for donation and shall make a recommendation to the City Council for acceptance or rejection of the donation. In considering the acceptance or rejection of donated artwork, the Arts Commission shall consider the following areas:
 - i. Style and nature of the artwork
 - ii. Professional and technical competence with which the artwork was executed.
 - iii. Overall quality and excellence of the artwork
 - iv. Overall appropriateness of the artwork in the context of the City exists collection and available display locations.
 - v. Installation and ongoing maintenance costs
 - vi. Durability of artwork

- vii. Public safety concerns, if any
- d. The recommendation of the Arts Commission shall be presented to the City Council at a regular meeting of the City Council. The City Council shall review the recommendation of the Arts Commission and may, thereafter, accept or reject the donation. If the City Council votes to accept the donated artwork, the artist shall enter into a donation agreement substantially in the form attached hereto. Upon execution of the donation agreement by the artist, title to the artwork shall pass to the City of Milpitas.
- e. Acceptance of a donated artwork shall not obligate the City under any circumstances to display the artwork in any public facility or on any public property.
- f. The City, in its sole discretion, may remove from its collection any donated artwork. In such event, the City shall comply with California Civil Code section 987, as amended, and shall make reasonable efforts to contact the artist who donated the artwork and offer to return the artwork. If the artist cannot be located after reasonable efforts, or the artist declines to accept the return of the artwork, the City may determine the disposition of the artwork.

City of Milpitas Arts Commission Art Donation Application



Please submit applications to:
Milpitas Community Center
Arts Commission
457 E. Calaveras Blvd.
Milpitas, CA 95035

For Questions please call 408-586-3210

I. Donor

Name: _____

Address: _____

Phone Number: () _____ Email: _____

Resume: *Please attach Resume to application, no staples.*

II. Art Work

Description of Art Work (include dimensions, mounting, placement requirements):

Estimated Value of Art Work: \$_____

Describe necessary care and maintenance of proposed Art Work:

*I _____ have reviewed the City of Milpitas' Art
Donation Policies and Procedures.*

Donor Signature: _____ Date: _____

Received By: _____ Date: _____ (staff only)

**AGREEMENT BETWEEN THE CITY OF MILPITAS AND
_____ RELATING TO
THE DONATION OF ARTWORK TO THE CITY**

This Agreement is made by and between the City of Milpitas, a municipal corporation (hereafter "City"), and _____ (hereafter "Artist") this _____ day of _____, 200_.

RECITALS

WHEREAS, the Artist has offered to donate the artwork depicted or described in Exhibit A, attached hereto and incorporated by reference herein (the "Work"); and

WHEREAS, the Milpitas City Council has agreed to accept the donation

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. DONATION OF WORK

1.1. The Artist agrees to donate at no cost to the City and the City agrees to accept the Work depicted or described in Exhibit A.

1.2. The Artist acknowledges and agrees that the City's acceptance of the Work shall not obligate the City to display or install the Work in or on any public facility. The Artist further acknowledges and agrees that the City retains sole discretion and decision-making authority with respect to the display or installation of the Work. The City agrees that if it decides to install or display the Work, it shall make reasonable efforts to consult with the Artist as set forth in Article 3.

1.3. Upon execution of this Agreement by the parties, ownership and title to the Work shall transfer to the City.

ARTICLE 2. WARRANTIES/STANDARDS

2.1. The Artist warrants that: (a) the design of Work being donated is the original product of his/her own creative efforts and (b) unless otherwise stipulated, the work is original.

ARTICLE 3. ARTIST'S RIGHTS

3.1. If the City chooses to display or install the Work, the City shall, at its expense, prepare and install at appropriate locations, after first making reasonable

efforts to consult with the Artist, a plaque or sign identifying the Artist, the title of the Work, and the year of completion. The City shall also reasonably maintain such notice in good repair against damages due to normal wear and tear over time, vandalism, and the elements.

3.2. The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City shall reasonably assure that the Work is properly maintained and protected, taking into account any recommendations of the Artist. The City retains the sole discretion to determine the means and methods by which it shall maintain the Work.

3.3. The City agrees that it shall not intentionally damage, alter, modify, or change the Work of the Artist without first conferring with the Artist and obtaining the prior written approval of the Artist to the proposed modification, or change.

3.4. Notwithstanding the Artist's refusal to provide (or the City's failure for any reason otherwise to obtain) the Artist's written approval provided for in Section 3.3 above, the City, in its sole discretion, shall have the right to remove the Work if it has previously chosen to install it.

3.5. The City shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist shall have the right to approve all major repairs and restorations, which approval the Artist shall not unreasonably withhold. If the Artist unreasonably fails to approve any repair or restoration, the City shall have the right to make or supervise significant repairs and restorations. In the event that the City makes repairs or restorations not approved by the Artist, the Artist shall have the right, at his/her sole option, to have his/her name and association with the Work severed. To the extent practicable, the Artist, during his/her lifetime, shall be given the opportunity to make or supervise significant repairs and restorations, however, the Artist shall not be entitled to any compensation from the City for such services, unless the parties agree in writing otherwise.

3.6. All repairs and restorations, whether performed by the Artist, the City, or third parties responsible to the Artist or the City, shall be made in accordance with professionally recognized principles of conservation of artworks.

ARTICLE 4. COPYRIGHTS

4.1. The Artist shall retain all copyright and other rights in and to the Work created under this Agreement, other than ownership of the Work itself. Artist shall grant to the City an irrevocable license to graphically depict the Work in any non-commercial manner whatsoever. For the purpose of this limitation, the graphic depiction of the Work on materials designed to promote the City shall be deemed to be a non-commercial use.

4.2. The Artist agrees that the Work complies with all applicable patent, trademark, and copyright laws, rules, regulations, and codes of the United States. The Artist further agrees that the Work does not utilize any protected patent, trademark, or copyright, unless the Artist has obtained proper permission and all releases and other necessary documents and provided copies of such releases and documents to City.

4.3. The Artist agrees to release, indemnify, and hold harmless the City, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions, or proceeding of any kind resulting from the performance of work under this Agreement that infringes upon any patent, trademark, or copyright protected by law.

4.4. All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © _____ (Artist's name) _____, (year) _____.

ARTICLE 5. MODIFICATION OF AGREEMENT

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

ARTICLE 6. HOLD HARMLESS/INDEMNIFICATION

6.1. If the Artist provides services to the City relating to the installation or conservation of the Work, Artist shall indemnify, defend, and hold harmless City and its officers and employees against liability for injury or damage caused by a negligent act or omission of Artist in the performance of such services and shall hold City harmless from any loss or damages directly or indirectly resulting to the City or its officers and employees on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences, or other causes predicated on active or passive negligence of the Artist This paragraph shall not be construed to exempt the City, its employees, and officers from its own fraud, willful injury, or violation of law whether willful or negligent. For purposes of Section 2782 of the Civil Code the parties hereto recognize and agree that this agreement is not a construction contract. By execution of this Agreement, Artist acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration.

ARTICLE 7. SEVERABILITY

In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

ARTICLE 8. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California and any suit or action by either party shall be brought in the County of Santa Clara, California.

ARTICLE 9. ATTORNEYS FEES

If a party brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. Such fees may be set by the court in the same action or in a separate action brought for that purpose.

ARTICLE 10. NO WAIVER

The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

ARTICLE 11. SURVIVAL.

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Artist survive the termination of this Agreement.

ARTICLE 12. EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

CITY OF MILPITAS

ARTIST

Thomas J. Wilson, City Manager

Attest:

Gail Blalock, City Clerk

Approved as to form:

Steven T. Mattas, City Attorney

EXHIBIT A

Description/Depiction of Work